***Template Format (with advisory annotations) for a Statement of Defence for determination by Access Dispute Adjudication (“ADA”) in accordance with the provisions of Chapter G of the Metro ADR Rules***

*This template, as required by Metro ADR Rule G13(b) is to be used by the Defendant Dispute Party to prepare a Statement of Defence for an ADA Hearing. Within the template, text in italics is advisory, and should, once taken into account, be deleted from the final document.*

### *Preamble*

*The Metro Access Dispute Resolution Rules provide that*

*“All disputes referred to resolution in accordance with these Rules under Condition B2.4.4 of the Metro Network Code shall be referred to an ADA in accordance with Chapter G as a single stage dispute resolution process with no appeal. Following service of a Notice of Dispute relating to such a dispute an ADA shall commence and the Secretary shall appoint a Hearing Chair for the dispute in accordance with Rule G8. If either party raises any objection then the Hearing Chair shall consider the best way to proceed.*

*Except as stipulated in Rule B8, all disputes referred for resolution in accordance with these Rules under Part J of the Metro Network Code shall be referred to an ADA in accordance with Chapter G with a right of appeal to ORR for determination in accordance with Part M of the Metro Network Code. Following service of a Notice of Dispute relating to such a dispute an ADA shall commence and the Secretary shall appoint a Hearing Chair for the dispute in accordance with Rule G8. If either party raises any objection then the Hearing Chair shall consider the best way to proceed.” [Metro ADR Rules B6 and B7 “Allocation Process”]*

*In addition,*

* *Dispute Parties may, in accordance with ADR Rule B10, agree within a formal “Procedure Agreement” that an ADA is the most appropriate determination procedure for their particular dispute, or,*
* *where the Parties cannot agree which is the most appropriate determination procedure for their particular dispute, the Allocation Chair shall preside over the process set out in Rule B14, which may result in the formulation of a Procedure Agreement providing for the Parties to submit to the determination of an ADA.*

*The detailed Management and Determination of each individual dispute heard by an ADA shall be subject to the direction of the Hearing Chair (as appointed by the Secretary as provided in ADR Rules B16 and G5). ADR Rule G7 provides that,*

***“Upon appointment, the Hearing Chair shall adopt procedures suitable to the circumstances of the case, avoiding unnecessary delay or expense to provide a fair means for the resolution of the matters falling to be determined. The Hearing Chair may give appropriate directions as to any or all aspects of the procedures to be followed and shall have the power at any time to make or amend the procedure (and the directions) to be followed by the parties in the ADA. The directions shall be in accordance with the Principles..”*** [*ADR Rule G7]*

*ADR Rule G12 provides the Hearing Chair with discretion to amend the procedures*

***“The ADA process is flexible and may be adapted by the Hearing Chair to accommodate disputes of differing complexity and size and requiring different levels of evidence. The Hearing Chair shall therefore actively consider whether variations on the standard directions (which are for a straightforward matter) set out in Rule G16 are appropriate or justified and will have regard to the submissions of the parties in this respect.”*** *[Rule G12]*

*Template formats corresponding to the requirements set down in ADR Rule G13(a) and (b) are provided in order that the Parties shall be prompted to ensure that all material relevant to their respective arguments are available to the laid down timescale (i.e ADR Rule G13, or as modified in the Procedure Agreement)*

* *to the other Dispute Party (Parties), and*
* *subject to confidentiality considerations, to be published on the ADC website;*

*always bearing in mind that*

“*The length of every Statement of Case shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair the maximum length of submissions shall be as follows: (a) a statement of claim or defence shall be no longer than 20 pages;”.* *[ADR Rule G18(a)],*

*and that*

*“An Access Dispute Adjudication (ADA) under these Rules is a determinative dispute resolution process in which, with the benefit of advice from independent railway Industry Advisors, a Hearing Chair determines the dispute in a timely and efficient manner on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to him.”**[ADR Rule G1]*

*THE TEMPLATE*

1. **DETAILS OF PARTIES**
   1. The names and addresses of the parties to the reference are as follows:-
      1. *[Full Company name* Limited*]* (Company number *xxxxxxxxxx*) whose Registered Office is at *[Full address]* *("[insert short form or abbreviation for Company name]*" ("the Claimant")); and
      2. [*Full company name* Limited] (Company number *xxxxxxxxxx*) whose Registered Office is at *[Full address] ("[insert short form or abbreviation for Company name]*" ("the Defendant")).
      3. *Include correspondence address, contact details and e-mail address if different.*
   2. *Where the Defendant is aware that any third party may be affected by the ADA finding in any of the ways sought in this reference, it should ensure that this information is conveyed to the Secretary of the ADC at the earliest possible opportunity, and the names of the relevant parties recorded here. The affected Parties can seek the guidance of the Hearing Chair (via the Secretary) as to any format to be used in respect of their representations.*
2. **THE DEFENDANT’S RIGHT TO CONTEST THIS REFERENCE**
   1. This matter is referred to an Access Dispute Adjudication (“ADA”) for determination in accordance with *Section [ ] of [ ] contract/Condition [ ] of the [Network Code]* *\*delete as appropriate.*

*The Defendant needs to make explicitly clear what provisions of its contract entitle, or direct, it to defend its disputed actions before an ADA. This means a summary, but with verbatim quotations, of those terms of the contracts that direct the parties how they should reach agreement, or, where this fails, what form of dispute resolution they should take.*

*Where the Defendant is disputing the Claimant’s right to bring the particular dispute, this should be identified here.*

1. **CONTENTS OF REFERENCE**

This Statement of Defence includes:-

* + 1. Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Statement of Claim, in the form of a summary schedule cross-referenced to the issues disputed by the Claimant in its Statement of Claim, identifying which the Defendant agrees with and which it disagrees with.
    2. A detailed explanation of the Defendant’s arguments in support of its position on those issues where it disagrees with the Claimant’s submission, including references to documents or contractual provisions not dealt with in the Statement of Claim;
    3. Any further related issues not raised by the Claimant, but which the Defendant considers fall to be determined as part of the dispute;
    4. The decisions of principle sought from the ADA in respect of
       1. legal entitlement, and
       2. remedies;
    5. Appendices and other supporting material.

1. **SUBJECT MATTER OF DISPUTE**
   * 1. *Provide very brief details of the dispute, in particular clarifying any areas where the Defendant disagrees with the description of the subject matter of the dispute given by the Claimant.*
     2. *Provide details of such relevant background information not already given by the Claimant as is necessary to ensure a common level of understanding of all members of the ADA, including details of the contractual framework surrounding the obligations of the parties in relation to the dispute. This is also the opportunity to make the case that the Claimant has sought to introduce as relevant material which the Defendant considers does not relate to the circumstance in dispute.*
     3. *Provide details of any relevant provisions of the Underlying Contract(s) that the dispute relates to, or is associated with, that have not been cited in the Claimant’s Reference but which the Defendant considers supports its case.*
     4. *If there is, in the contract, a process, with defined stages, that must be completed before the parties can agree they are in dispute (e.g. consultation, responses within a set timescale, decision with reasons), these need to be stated and evidence given about the extent to which these requirements have been complied with.*
     5. *Ensure that a copy of the relevant extract(s) from the document(s) referred to above is/are provided as Appendices.*

*NOTE: It can be assumed that an ADA will have access to a current edition of the Metro Network Code. However,*

* *if the dispute derives from actions taken (or not taken) before the date of introduction of the relevant pages of the current Metro Network Code the Defendant should ensure that the ADA is supplied with the relevant pages of the applicable version*
* *the parties should not assume that the ADA members have personal copies or knowledge of the relevant parts (in particular any Schedules) of the specific access agreements in dispute whether or not governed by Model Clauses. The Committee Secretariat is available to give advice.*
  + 1. *Provide details of any other documents that are relevant to the dispute. The relevant parts must also be copied and annexed to this Defence.*

1. **EXPLANATION FROM THE DEFENDANT’S PERSPECTIVE OF EACH ISSUE IN DISPUTE**

*This section has to achieve four objectives, namely*

* *to identify any issues raised by the Claimant where the Defendant agrees, broadly or wholly, with the Claimant;*
* *to identify those issues where the Defendant disagrees with the Claimant’s position, together with the reasons for that disagreement;*
* *to introduce any issues that have not been raised by the Claimant but which the Defendant considers are of material relevance to the overall reference, together with the reasons for that view; and*
* *to draw all the foregoing together into a demonstration that the Defendant’s case is the stronger, or should otherwise be preferred to that of the Claimant..*

*The Statement of Defence should therefore distinguish clearly, by reference to the Statement of Claim,*

* 1. **Issues where the Defendant Accepts the Claimant’s Case.**
  2. **Issues where the Defendant qualifies or refutes the Claimant’s Case, and the reasons therefore.**
  3. **Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination, and the reasons supporting these contentions.**
  4. **Why the arguments raised in 5.1 to 5.3 taken together favour the position of the Defendant.**

*The Defendant in any case brought before an ADA should keep in mind that in most cases the ADA needs to be given*

* *a clear and logical exposition of the factors that support the rightness of the Defendant’s actions or position (or failing one ‘correct’ position, the reason(s) it adopted a best-case position). Where the argument requires reference to any contractual provision, the precise extract should be quoted verbatim;*
* *a clear statement of each point where the Defendant refutes the Claimant’s arguments or conclusions, such that the extent of the differences between the parties can be clearly appreciated;*
* *clarification in respect of each point of difference whether the issue is primarily one of principle, or of quantification in respect of a specific instance or instances;*
* *a clear summary of the Defendant’s individual view of the practical implications of the dispute (e.g. numbers of trains potentially affected, ditto passengers or freight customers, order of magnitude of any financial impact). Given the provisions of Metro ADR Rule G2, requiring the ADA to* ***“be administered in a way which is proportionate to …the objective importance of the dispute to the Dispute Parties”*** *then even in cases of principle, the ADA is reasonably entitled to know how the business of a Party is affected by any possible outcome of the dispute;*
* *confirmation that the Defendant is in agreement with the Claimant in respect of any aspects of the dispute that the Parties do not wish the ADA to address. This could include instances where, for example, the Parties have agreed to test a matter of principle, but reserve to themselves the consequent negotiation of any settlement of quantum.*

1. **DECISION SOUGHT FROM THE ADJUDICATION**
   1. *The Defendant should set out the outcome it is seeking from the ADA’s determination, differentiating between*
      1. *the matters of principle*

6.1.2 *specific conclusions deriving from those matters of principle.*

*In all their arguments and representations, the Defendant should remember that the ADA is constrained by* ***Metro ADR Rule A5*** *which states*

***“Each and every Forum shall reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis. Each and every Forum shall act in accordance with the law; and all its decisions, including its determinations and decisions on procedure, shall be in accordance with the law.”***

*The Defendant will have a clear reason why it has not already settled the dispute, and the result that it wishes the ADA to deliver. There is a need therefore for it to set down clearly what it wants the ADA to find in its favour.*

*Logically, when preparing the submission, the decision sought from the ADA should be the first thing finalised, and arguments then marshalled to refute the case made by the Claimant. That said, the Defendant should be clear that the decision sought is one that an ADA can give.*

* 1. ***The Claimant will have set out any specific remedies******sought***. *For example “as a result of the decided principle(s) above, the Defendant is liable to pay £X to the Claimant”.*

*Remedy is what the aggrieved Dispute Party contends it should be granted if the ADA finds in its favour. Access agreements are frequently prescriptive about such matters and there are no benefits to be won from advancing arguments for remedies that lie outside the ADA’s powers which are governed by* ***Metro ADR Rule******A6****, which states:*

*“Each and every Forum shall:*

*(a)where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant that remedy accordingly; or*

*(b)Where a specific remedy is provided for at law, grant that remedy accordingly; or*

*(c)where the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Forum, exercise that discretion in accordance with any requirements and criteria set out in the Access Conditions and Underlying Contract after due consideration of all remedies and orders that could properly be made.”*

*Where a Claimant wishes to argue for an exercise of “discretion” as in (c) above, it must consider whether the ADA has such discretion given the provisions of (a) and (b).*

* 1. *Clarify whether you wish the Hearing Chair to decide other issues – such as ordering costs*.

1. **APPENDICES AND ANNEXES**

The Claimant confirms that it has complied with Access Dispute Resolution Rule G13(a)(ix) *[which requires that: copies of the following Documents which shall be annexed and cross referenced to the statement: (A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and (B) any other Documents referred to in the reference.*

*Where the dispute relates to previous (i.e. no longer current) versions of Access Conditions/the Metro Network Code, all relevant extracts of the applicable documents are to be included.*

All appendices and annexes are bound into the submission and consecutively page numbered. To assist the ADA, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent. Any information only made available after the main submission has been submitted to the ADA will be consecutively numbered so as to follow on at the conclusion of the previous submission.

1. **SIGNATURE**

| For and on behalf of *xxxxxxxxxxxxxxxx* Ltd  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  -----------------------------------------------------------  Print Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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*This is a control mechanism; it provides the ADA with assurance that the dispute has been referred to with the knowledge and understanding of the disputing corporate body. This is important, as engaging in formal dispute resolution implies a commitment to accepting the outcome of that process.*

*In this context, the Claimant is reminded that in sending representatives to argue its case before the ADA,* ***“****it shall … ensure that* (a) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value)” *[Metro ADR Rule A19]*

*Now provide the Appendices* (“**The Appendices***”) using a page break. A covering list of Appendices will be helpful. Bear in mind that the Panel and Chair will need to read everything submitted; only include material that will genuinely be helpful to the Panel, for example, do not append entire Network Code Chapters or entire policy documents - the relevant extracts will suffice.*